## **United States Department of Labor Employees' Compensation Appeals Board**

W.D., Appellant	)	
and	)	Docket No. 15-1707
DEPARTMENT OF THE AIR FORCE, RANDOLPH AIR FORCE BASE. TX, Employer	)	Issued: July 13, 2017
	)	
Appearances: Brett Elliot Blumstein, Esq., for the appellant Office of Solicitor, for the Director		Case Submitted on the Record

## **ORDER REMANDING CASE**

## Before:

CHRISTOPHER J. GODFREY, Chief Judge PATRICIA H. FITZGERALD, Deputy Chief Judge COLLEEN DUFFY KIKO, Judge

On August 10, 2015 appellant, through counsel, filed an application for review of an Office of Workers' Compensation Programs' (OWCP) nonmerit decision dated May 22, 2015, which found that appellant's February 23, 2015 request for reconsideration was untimely filed and failed to demonstrate clear evidence of error. The appeal was docketed as No. 15-1707.

In a merit decision dated January 21, 2014, OWCP denied appellant's traumatic injury claim in OWCP file number xxxxxx098. On August 6, 2014 it received his request for reconsideration of the January 21, 2014 decision in file number xxxxxx098; however, the request was scanned to OWCP file number xxxxxx095.

On February 23, 2015 appellant requested the status of his reconsideration request. By decision dated May 22, 2015, OWCP denied his request for reconsideration without conducting a merit review, finding that the request was untimely filed and failed to demonstrate clear evidence of error. It stated in the decision that appellant's request was untimely because it was received on February 23, 2015, more than one year after the January 21, 2014 decision.

The Board finds that OWCP improperly determined in this case that appellant's request for reconsideration was untimely filed. The time for requesting reconsideration of OWCP's January 21, 2014 decision expired on January 21, 2015. As appellant's request for

reconsideration was received on August 6, 2014, but was improperly scanned to file number xxxxxx095, it was timely filed.<sup>1</sup>

Accordingly, the Board finds that appellant timely requested reconsideration of the January 21, 2014 merit decision. The case will be remanded for OWCP for application of the standard for reviewing timely requests for reconsideration.

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 22, 2015 is set aside. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: July 13, 2017 Washington, DC

> Christopher J. Godfrey, Chief Judge Employees' Compensation Appeals Board

> Patricia H. Fitzgerald, Deputy Chief Judge Employees' Compensation Appeals Board

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

<sup>&</sup>lt;sup>1</sup> See Debra McDavid, 57 ECAB 149 (2005).